No. 98-83

In The

Supreme Court of the United States

October Term, 1998

CHARLES WILSON, GERALDINE WILSON and RACHEL SNOWDEN, next friend/mother of VALENCIA SNOWDEN, a minor,

Petitioners,

vs.

HARRY LAYNE, JAMES A. OLIVO, JOSEPH L. PERKINS, MARK A. COLLINS, ERIC E. RUNION and BRIAN E. ROYNESTAD,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed July 7, 1998
Certiorari Granted November 9, 1998

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U.S. Department of Justice

United States
Marshals Service **(LOGO)**

MEDIA RIDE-ALONGS

The U.S. Marshals Service, like all federal agencies, ultimately serves the needs and interests of the American public when it accomplishes its designated duties. Keeping the public adequately informed of what the Service does can be viewed as a duty in its own right, and we depend on the news media to accomplish that.

Media "ride-alongs" are one effective method to promote an accurate picture of Deputy Marshals at work. Ride-alongs, as the name implies, are simply opportunities for reporters and camera crews to go along with Deputies on operational missions so they can see, and record, what actually happens. The result is usually a very graphic and dynamic look at the operational activities of the Marshals Service, which is subsequently aired on TV or printed in a newspaper, magazine, or book.

However, successful ride-alongs don't just "happen" in a spontaneous fashion. They require careful planning and attention to detail to ensure that all goes smoothly and that the media receive an accurate picture of how the Marshals Service operates. This booklet describes considerations that are important in nearly every ride-along.

Initially, it's important to realize that not every operational situation lends itself to a ride-along. Some may simply be too dangerous or sensitive to have media involved-the risk may outweigh the possible benefits. That may be true in some fugitive apprehension cases,

which normally offer the best possibilities for ride-alongs. In other instances, there just won't be the film or photo opportunities the media desire (e.g. solid action sequences) to make the trip worth it. That could hold true for some asset seizures or prisoner transports.

So, we must initially decide whether you have an event that could support a ride-along, realizing that reporters are generally looking for action stories, human interest angles, or unusual storylines. Is it an event you want to publicize, and is it an interesting or important case?

Planning May "Save the Day"

Once you've made the determination that a ride-along is appropriate and desirable, the next step is planning for it. There are a number of important considerations that must be addressed early on if you want the ride-along to be successful. Among those considerations are:

- What media representative(s) will you invite to ride along (and who will you offend if you do not offer a similar invitation)?
- Who will be responsible for accompanying and briefing the media about the case?
- What information on the case/event can you give them without compromising security or investigative methods?
- What are the ride-along ground rules you need to establish for the media?
- Are there any particular logistical problems that may need to be worked out for the ride-along?

• What coordination is needed with other agencies such as local, state or other federal agencies who might be involved in the ride-along case?

Who to Invite?

Determining who to invite on the ride-along is an important first step. Don't bite off more than you can chew. Start with a local reporter you know and trust, someone you feel comfortable dealing with. Recommendations from other local law enforcement agencies who've worked with the media might be considered.

Reporters are highly competitive with each other so avoid inviting more than one media organization to the same ride-along. Arrange for just one at a time or else you may be caught in the middle between competing TV stations or newspapers. Media pools – having two or three people go along to represent all the interested media and then share the results – may work well for major news events, but not for ride-alongs.

For those you do invite, remember that information is the lifeblood of journalism. Be prepared to relate background on the case, details about fugitives or seized property, and other related facts such as original charges. Comprehensive information is needed, not simply thumbnail sketches with very few details.

In the planning stage, determine what you can release and when you can release it. Reporters need to be briefed on basic facts before the ride-along begins, and on the specifics as they become available. Handing them a written report or fact sheet at the beginning is a good idea. If

security or other concerns prohibit the release of much information, you probably have a poor ride-along situation to begin with.

Establish Ground Rules

Another good idea – actually, it's an essential one – is to establish ground rules at the start and convey them to the reporter and camera person. Address such things as what can be covered with cameras and when, any privacy restrictions that may be encountered, and interview guidelines.

Emphasize the need for safety considerations and explain any dangers that might be involved. Make the ground rules realistic but balanced – remember, the media will want good action footage, not just a mop-up scene. If the arrest is planned to take place inside a house or building, agree ahead of time on when the camera can enter and who will give the signal.

If you want liability waivers signed, make sure reporters know this ahead of time and that they sign these statements before the ride-along begins. Retain the signed waivers in your files. For your reference, a sample liability waiver is included as an appendix to this booklet.

Agreeing to an Embargo

If a news embargo is part of the ground rules, discuss this aspect at the time the initial invitation is extended to a reporter. A news embargo simply means that the reporter agrees not to release the story generated by the ride-along until an agreed upon date. For instance, the ride-

along may take place within the context of a large-scale fugitive operation you have underway. In that case, you will likely not want any publicity about the operation until its conclusion.

Remember that you will have to clearly define for the reporter the exact nature of the news embargo. Does it apply only to references about the operation? Or is it meant to prohibit the early release of any and all information obtained before and during the ride-along?

And if you arrest a high profile fugitive during a ride-along, other news media may hear of it and break the news. Once that happens, the reporter you've worked with will certainly feel the embargo no longer applies, at least as far as that particular arrest is concerned. Discuss ahead of time just what could be released in that situation, such as information about the arrest but no mention of the on-going operation.

Finally, to avoid nasty surprises, make sure both the reporter and his or her editor agree to the embargo. If they don't, or won't, consider inviting another media organization. Make sure an agreed-to embargo is in place before discussing any substantial facts of the operation and ride-along.

Getting the Signals Straight

The logistics involved can sometimes prove tricky, so plan carefully before the ride-along takes place. The planning should include such details as where you will meet the reporter to begin the ride-along, what transportation will be used to and from the scene, how you can make

immediate contact if a ride-along opportunity develops unexpectedly (i.e. get home and pager phone numbers). In urban areas, store and shopping center parking lots are often good places to meet reporters.

If space is tight inside the arrest team's vehicle, the camera person can ride with the arrest team and the reporter with the Deputy who is going along as the media escort. You'll need a second car anyway to return the reporter and camera person to their vehicle after the arrest.

Okay, you've done all the planning you can think of – and you're ready to execute and the media are ready to ride. Does that mean success is an automatic follow-on? Not by a long shot. The execution phase is where everything comes together, including the actions and demeanor of the Deputies who are taking part.

The very best planning won't result in a good ride-along if the Marshals Service personnel involved do not do their part. It's a case of actions speaking as loudly as words, and both are important in getting the best media exposure possible.

"Waving the Flag"

One action of special consequence is "waving the flag" of the Marshals Service. This is accomplished when Deputies can easily be recognized as USMS Deputies because they are wearing raid jackets, prominently displaying their badges, or exhibiting other easily identifiable marks of the Service. We want the public to know who you are and what kind of job you do. That is one of the goals of

the ride-along. So having Deputy Marshals easily identified as such on camera is not just a whim – it's important to the overall success of the ride-along.

Of course, how the Deputies act and what they say is also crucial. During the ride-along virtually any statement made by Deputies just might end up as a quote, attributed to the person who made it. Sometimes that could prove embarrassing. A Deputy must try to visualize what his or her words will look like in a newspaper or sound like on TV. Being pleasant and professional at all times is key, and that includes not being drawn into statements of personal opinion or inappropriate comments. Using common sense is the rule.

Deputies who would be extremely uncomfortable in a media role should not be forced into it. Look instead for those who are particularly articulate and who would be good spokespersons for the Service. If they've had prior experience with reporters or news organizations, they are even more valuable.

Coping with "Dry Holes"

What if all goes well in the ride-along except for one thing – you don't achieve the intended objective? The fugitive isn't apprehended or the property can't be seized. It's one of those occasional "dry holes" that happen, but this time a reporter is present to see the failure.

That's a chance you always take in a ride-along, but it doesn't have to be a media failure. The reporter can still see how you operate. He or she can still get a feeling for

what Deputy Marshals do and how they do it, as well getting some background footage and story details.

A "dry hole" experience can be used, for instance, to emphasize just how tough a job it is to pursue and apprehend fugitives. Even after days and weeks of substantial investigation, things might not fall perfectly into place. Use the experience to emphasize the many difficulties law enforcement officers face.

In the best circumstances, a "dry hole" will later be followed up by a successful apprehension or seizure at which the media are again present. So it pays to stay in touch with the ride-along media crew. Arrange for them to be ready on very short notice if you do locate the fugitive you are pursuing, or if another good ride-along opportunity presents itself. That's why getting their pager numbers and home phone numbers is important. Have your logistics plan in place should a spontaneous ride-along situation present itself. If a reporter is not available, the editor or producer may want to send a camera person along to record the "action," and have a reporter follow up on the story later.

It's Never Over Until It's Over

Whether the ride-along was successful (resulting in an apprehension, seizure, etc.) or not, reporters may have follow-up questions or need information. The matter doesn't necessarily end when you drop the reporter off at the conclusion of the ride-along. Be prepared to fulfill other information requests related to the case. You may

not be able to give them all they need, because of security, privacy, or other considerations, but help them out to the extent you can.

Remember, it's better to help them get accurate facts. Otherwise, the wrong information may just get spread all over the newspapers and across TV screens, leading to more phone calls and other queries than you will want to deal with.

You also need to find out when the coverage will air or end up in print. Ask the reporter if he or she can keep you informed on that matter. You might "grease the skids" for this by offering the reporter, camera person, or other media representatives involved a memento of the Marshals Service. Marshals Service caps, mugs, T-shirts, and the like can help establish a rapport with a reporter that can benefit you in the future.

Visiting-Producers and Editors

Of additional benefit is getting to know the producers and editors of the media outlets you've invited on ride-alongs. These people will have control of the news product after it leaves the reporter's hands. They have the authority to pull a story or to give it less play on the air or in the newspaper. As mentioned earlier, if your assigned reporter is unavailable, the editor or producer can send a camera person on the ride-along and have the reporter follow up later. They also are important sources to know if you are involved with future media events such as press conferences, or want to try and arrange some specific media coverage.

Setting up a ride-along gives you the opportunity to meet with or talk to producers and editors. At your first meeting with the reporter, ask who you should contact if the reporter is unavailable. The answer will probably be the name and telephone number of the editor or producer. You may be able to set up office appointments, or else talk to them over the phone. If you feel strongly about the need for media coverage, these are the people you need to sell your ideas to.

Getting to the Final Product

Naturally, it's important to see the final product of the ride-along when it airs on TV or appears in the newspaper. You should arrange to videotape any TV news coverage or clip the resulting newspaper stories and send a copy of the videotape or news clipping to the Office of Congressional and Public Affairs.

If you haven't worked with the media before, or with a particular news organization, the ride-along offers an excellent opportunity to establish a relationship with your local reporters. It's a beginning that you can build on to your advantage. Learning to work with them makes good sense.

Will the media always act the way you'd like them to? Probably not. Will they always give you the coverage you want? Again, unlikely. But you can make a difference in what appears on television news and in the newspaper if you have a professional, working relationship with reporters. You can ensure they receive accurate, timely information in matters pertaining to the Marshals Service. The ride-along is a good place to start.

This booklet has attempted to address some of the basics of media ride-alongs. The scope is not all-inclusive. It was not intended to cover every situation that arises or every detail that you must consider. Simply put, there are situations that will be unique to each District, and reporters whose requirements will vary from city to city.

However, if you have other questions concerning ride-alongs that haven't been covered, or you would like advice about a particular media situation, please feel free to contact the Office of Congressional and Public Affairs. The phone numbers are 367-9065 (FTS) or 202-307-9065 (Commercial). We will make every effort to help you plan for a most successful ride-along.

MEMORANDUM OF UNDERSTANDING

"OPERATION GUNSMOKE"

This Memorandum of Understanding is entered into by the federal, state, county, and municipal law enforcement agencies and the United States Marshals Service.

PURPOSE

The purpose of the Memorandum is to outline the combined mission of the United States Marshals Service and these law enforcement agencies hereafter known as "Operation Gunsmoke" to concentrate their investigation efforts on armed individuals wanted on federal and/or state and local warrants for serious drug and other violent felonies. This Memorandum will formalize the policy, guidance, and planning between the participating agencies.

MISSION

The primary mission of "Operation Gunsmoke" will be to seek out and attempt to take into custody those persons believed to be armed or have access to firearms or whose backgrounds reveal a tendency for violence and recidivism. "Operation Gunsmoke" will concentrate on armed fugitives who are wanted for crimes such as; murder, armed robbery, arson, sexual assault, drug sales, trafficking, firearms offenses or any crime in which violence was used. Also, individuals armed while within a school zone as listed in the federal law known as the "Gun Free School Zone Act", will also be targeted.

The United States Marshals Service and each participating law enforcement agency will identify those outstanding felony warrants on which "Operation Gunsmoke" will focus.

The intent of this joint effort will be to locate and arrest those federal and state fugitives with violent felony histories and other identified career criminals, thereby increasing public safety.

COMPOSITION - CHAIN OF COMMAND

A. "OPERATION GUNSMOKE"

"Operation Gunsmoke" will consist of a combined body of members from state and local law enforcement departments plus deputies and agents from the United States Marshals Service and other federal agencies.

B. "OPERATION GUNSMOKE" DIRECTION

The policy, program involvement, and direction of "Operation Gunsmoke" shall be the joint responsibility of the Steering Committee. If necessary, representatives from all agencies shall meet and confer on matters pertaining to policy and management of the operation.

The local officers will, for administrative purposes, report directly to their commanding officers. The supervising USMS employee will report directly to the U.S. Marshal and the Enforcement Division.

C. SUPERVISION

Supervision of the personnel assigned to "Operation Gunsmoke" will be the mutual responsibility of the participating agencies. Responsibility for the conduct of the assigned personnel will rest within the respective agency's policies and procedures.

Operational problems will be mutually addressed and resolved by the assigned supervisors. If problems arise which cannot be resolved to their mutual satisfaction, they should be presented progressively to the next highest authority in both agencies for resolution. It is agreed that the resolution of operational problems at the lowest possible level is in the best interest of the operation. "Operation Gunsmoke" headquarters office will be located at the USMS Headquarters, Arlington, VA.

EQUIPMENT

Each agency will be equipped with its own radio frequency. The USMS will supply enough radios to equip each vehicle with the Marshals Service frequency and the communications security frequency. Radio will be the main source of communication.

RECORDS AND REPORTS

All "Operation Gunsmoke" investigative reports will be maintained at the site office.

PROCEDURES

A. Tour of Duty

Members of "Operation Gunsmoke" will be dedicated full time to the investigation and execution of outstanding federal and state warrants. Continued assignment of members will be based on performance and will be at the discretion of their respective departments and United States Marshals Service supervisors.

B. Integration of Unit

All cases will be jointly investigated. Each team unit will consist of state and/or local police and USMS and other federal agency representatives. It is agreed that unilateral action on the part of either agency is not in the best interest of "Operation Gunsmoke".

C. Assignment of Cases

"Operation Gunsmoke" supervisors will assign cases to each team. The team will be totally responsible for the proper investigation of each case from start to finish.

D. Prosecution

An arrest based on a warrant will be prosecuted in the federal or state court that has venue. A determination will be made on a case-by-case basis when there is an arrest of a fugitive who has a warrant in both the federal court system and the state court system, as to sequence of prosecution.

The criteria for the decision will be based on which level the prosecution would be of the greatest benefit to the overall operation. Recommendations shall be made to the prosecutors concerned.

INFORMANTS

It is agreed that funds for informants relating to the execution of federal, state, and local warrants will be supplied by the United States Marshals Service pursuant to Marshals Service regulations.

PERSONNEL

The Departments agree to furnish officers, deputies, or agents for the entire period in accordance with the provisions of the PROCEDURES paragraph, page 2, of this Memorandum of Understanding.

DURATION

Effective the first day of the operation, the term of this understanding shall be for a 74 day period and shall be terminated upon the withdrawal of either agency. Upon termination of this understanding, all equipment will be returned to the supplying agency.

NATIONAL PRISONER TRANSPORTATION SYSTEM (NPTS)

Any state and local fugitives arrested or located in other detention facilities, within the United States and its territories, as a direct result of investigations conducted during "Operation Gunsmoke," will be transported to the respective venue at no expense to the participating agency.

PRESS EMBARGO

It is agreed that no mention will be made to the press about "Operation Gunsmoke" until a joint press statement can be prepared at the culmination of the operation. That press statement will be coordinated through the U.S. Marshals Service Office of Congressional and Public Affairs.

PRESS RELEASE

At the end of "Operation Gunsmoke", a press conference will be held to announce the results of the operation. Expenses for travel to the press conference and lodging while there for one representative of each participating agency will be paid by the U.S. Marshals Service. The site of the press conference will be announced prior to the end of the operation.

Montgomery County
Sheriff's Office
50 Courthouse Square, T-8
Rockville, Maryland 20850
217-7007

UNITED STATES MARSHAL

(STATE/LOCAL AGENCY)

_____ DISTRICT OF _____

/s/ Raymond M. Kight
Raymond M. Kight
Sheriff

2/12/92
Date

Date

	Phase I	01/17/92	04/24/92
	DUSMs IN DISTRICT	DUSMs OUT OF DISTRICT	STATE/ LOCAL OFFICERS
HOUSTON	6	12	6
SAN DIEGO	4	6	4
LOS ANGELES	11	15	12
MIAMI	9	13	8
NEW YORK	14	23	14
NEWARK	3	3	3
BALTIMORE	2	2	4
DC SupCT/ DistCT/Alex	11	8	10
PHOENIX	4	6	4
	Phase II	01/24/92	04/30/92
DALLAS	6	6	6
DETROIT	6	2	6
PHILLY	7	0	5
CHICAGO	5	6	5
NEW ORLEANS	5	2	5
SEATTLE	4	0	4
KANSAS CITY	5	0	5

UNITED STATES MARSHALS SERVICE

POLICY NOTICE

NUMBER: 94-006 DATE: March 21, 1994

SUBJECT: **MEDIA POLICY**

BACKGROUND

The Office of Policy and Communications (OPC) serves as the focal point for media queries about the USMS and its operations. This centralization ensures a timely and consistent response, facilitates the appropriate coordination with the Department of Justice (DOJ), and ensures conformity with U.S. Marshals Service (USMS), DOJ, and Administration policies. The Office is also responsible for review and approval of all USMS publications, of articles written by USMS employees about the Service and intended for release to external publications, and liaison with writers, publishers, and television production companies. In addition, OPC provides media-liaison support for district offices for high profile trials or other events which involve significant media coverage.

POLICY

For the purpose of this policy, "media" refers to both print media (newspapers, wire services, magazines, books) and electronic media (radio and television news and entertainment programs, motion pictures, and video productions).

Reporting. All incidents occurring in a district which have generated or can reasonably be expected to generate greater than local media or public interest are to be

reported to the Chief Policy and Communications Officer as soon as possible. The notification to OPC is in addition to the reporting of significant operational incidents to the Associate Director of Operations. Whenever possible, contact should be made in advance of such matters, so that we may inform, and coordinate with, the Department of Justice.

United States Marshals and Chief Deputies. U.S. Marshals and their Chief Deputies serve as the local information officers and may respond to media and public inquiries relating to their district within the guidelines set forth herein. They are [copy missing] staffs are aware that *only* the U.S. Marshal, the Chief Deputy, or an individual specifically designated by the Marshal, are the authorized spokespersons for the district on local operational incidents, and that other staff members are required to direct any news media inquiries to them. The Marshal or Chief Deputy may delegate to other personnel the authority to provide information to the news media when circumstances make it impractical for the Marshal or Chief Deputy to do so (e.g., when an operational event occurs in a district suboffice location and neither the Marshal nor Chief Deputy are available or sufficiently informed of details to respond to media inquiries). Specific advice on interacting with media representatives is contained in the "Media Guidelines Booklet" which can be obtained from OPC.

Coordination with U.S. Attorney. Department of Justice guidelines require field offices to obtain approval from the local U.S. Attorney prior to issuing news releases, convening press conferences, or contacting the media relative to any case or matter which is being litigated, or

which may be litigated (this would include investigations in progress), by the U.S. Attorney's office. Because there are a number of issues related solely to the operations of the USMS (such as court security and prisoner transportation) which are of interest to the media, but which do not involve litigation and about which the U.S. Attorney would not have pertinent information, U.S. Marshals should discuss this requirement with the U.S. Attorney for their district to determine more specifically the areas requiring approval and the procedures to be observed. This is especially important in districts where media contact is frequent. Fugitive case matters should be discussed, because they are viewed somewhat differently from other criminal matters, and contingency procedures – such as who will be responsible for media statements in the event of a shooting – should also be covered. If U.S. Marshals encounter problems with adhering to the guidelines and cannot resolve them locally, they should contact the Chief Policy and Communications Officer for guidance.

Assisting the News Media.

A. In order to promote the aims of law enforcement, including the deterrence of criminal conduct and the enhancement of public confidence, USMS personnel, with the prior approval of the U.S. Attorney, and except as indicated in paragraph C below, may assist the news media in photographing, taping, recording, or televising a law enforcement activity. The U.S. Attorney will consider whether such assistance would unreasonably endanger any individual, would prejudice the rights of any party or other person, or is otherwise proscribed by law.

B. Other than by reason of a Court order, USMS personnel shall not prevent the lawful efforts of the news media to photograph, tape, record, or televise a sealed crime scene from outside the sealed perimeter.

C. In cases in which a search warrant or arrest warrant is to be executed, no advance information will be provided to the news media about actions to be taken by law enforcement personnel, nor shall media representatives be solicited or invited to be present. This prohibition also applies to operations in preparation for the execution of warrants and to any multi-agency action in which USMS personnel participate. If news media representatives are present, USMS personnel may request them to withdraw voluntarily if their presence puts the operation or the safety of individuals in jeopardy. If the news media representative declines to withdraw, USMS personnel should consider cancelling the action, or their participation in it if that is a practical alternative. Exceptions to this policy may be granted in extraordinary circumstances by the Attorney General or Deputy Attorney General.

D. In any filming or taping by news media, caution should be used not to reveal the faces of any individuals whose effectiveness or safety may be compromised. USMS personnel who do not wish to appear on a film or video tape which will be shown publicly are not required to do so. USMS employees should advise the news media of their concerns in this regard and request that they avoid such filming. In any filming conducted by, or sponsored by, the USMS, faces of subjects and third parties

(e.g., family members) must be blurred to prevent recognition before the tape is released to the media or shown publicly.

Media "Ride-Alongs". It is the current policy of the Department of Justice that media "ride-alongs" *not* be conducted. (In this context, "ride-alongs" do not encompass the air or bus movement of prisoners.)

Release of Information and Restrictions. The Department of Justice has established specific guidelines, consistent with the provisions of 28 CFR 50.2, governing the release of information relating to criminal and civil cases. This policy is based on the need to balance interests involving the right to a fair trial, the right of the public to know, and the Government's ability to administer justice.

A. General. No USMS employee should furnish any statement or information that he or she knows, or reasonably should know, will have a likelihood of prejudicing a legal proceeding.

B. Confidentiality. Careful weight must be given in each case to protecting the rights of victims and litigants as well as the protection of the life and safety of other parties and witnesses. To this end, the Courts and Congress have recognized the need for limited confidentiality in:

1. On-going operations and investigations;
2. Grand jury and tax matters;
3. Certain investigative techniques; and,
4. Other matters protected by the law.

C. Disclosable Information.

1. USMS personnel, subject to specific limitations imposed by law, or by court rule or order, and consistent with the provisions of this section, may make public the following information in any criminal case in which charges have been brought:

a. The defendant's name, age, hometown name, occupation or name of employer, marital status, and similar background information;

b. The substance of the charge, limited to that contained in the complaint, indictment, information, or other public documents;

c. The identity of the investigating and/or arresting agency and the length and scope of an investigation; and

d. The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest. Any such disclosures shall not include subjective observations.

2. In the interest of furthering law enforcement goals, the public policy significance of a case may be discussed by the appropriate U.S. Attorney or Assistant U.S. Attorney.

D. Civil Cases. In civil cases, similar identification material regarding defendants, the concerned government agency or program, a short statement of the claim, and the government's interest, may be released.

E. Disclosure of Information Concerning Ongoing Investigations. Except as provided below, USMS personnel shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress, including such matters as the issuance or serving of a subpoena, prior to the public filing of the document. *Exception:* In matters that have already received substantial publicity, or about which the community needs to be reassured that the appropriate law enforcement agency is investigating the incident, or where release of information is necessary to protect the public interest, safety, or welfare, comments about, or confirmation of, an ongoing investigation may need to be made. In these unusual circumstances, the U.S. Attorney handling the matter must be consulted and must approve dissemination of any information to the media.

F. Disclosure of Information Concerning Person's Prior Criminal Record.

1. USMS personnel shall not disseminate to the media any information concerning a defendant's or subject's prior criminal record, except convictions, either during an investigation or pending litigation. However, in certain situations, such as with fugitives or extradition cases, USMS personnel may confirm the identity of defendants or subjects, and the offense(s). Where a prior *conviction* is an element of the current charge, such as in the case of a felon in possession of a firearm, USMS personnel may confirm the identity of the defendant and the general nature of the prior conviction where such information is part of the public record in the case at issue. There are other circumstances where it may be permissible to release information about prior convictions, such

as when discussing career criminals. The Office of Policy and Communications should be consulted in such cases.

2. The release of information concerning an investigation, arrest, release, prosecution, adjudication of charges, or correctional status is not appropriate if it is not reasonably contemporaneous with the event to which the information relates. For example, if a convicted felon has served his sentence and resumed his place in society, it would not be appropriate to release information about his prior record or incarceration without a law enforcement purpose.

G. Concerns of Prejudice.

1. Because the release of certain types of information could tend to prejudice an adjudicative proceeding, USMS personnel should refrain from providing the following information:

a. Observations about a defendant's character;

b. Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement;

c. Reference to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or forensic or laboratory services, or to the refusal by the defendant to submit to such tests or examination;

d. Statements concerning the identity, testimony, or credibility of prospective witnesses;

e. Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial;

f. Any opinion as to the defendant's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea of a lesser offense.

2. A news release should contain a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

H. Publications, News Releases, News Conferences, and Interviews.

1. Dissemination or publication of information concerning USMS activities which may receive regional or national attention requires the approval of the Chief Policy and Communications Officer.

2. USMS personnel will not disclose information about:

a. Any operation, investigation, or security activity which would jeopardize its success or affect the safety of those involved;

b. Sensitive sources of information leading to arrest – e.g., confidential informants, undercover officers, intelligence sources, electronic surveillance;

c. Third parties – any individual who is not the subject of the activity;

d. Prisoners (see below).

I. Publicity and Photography of Federal Prisoners. Procedures related to the publicity and photography of federal prisoners are outlined in the Prisoner Operations chapter of the USMS Manual. As a general rule, post-arrest photographs of prisoners or fugitives are not made available to the news media unless the individual has been the subject of a "Wanted Poster". As with other criminal history information, there is a time element to be considered in the release of such information (see VIII, F, 2 above). Booking photographs may be released if the subject is a fugitive and the release of the photograph is for the purpose of locating that individual; otherwise, "mugshots" will not be released. Requests for exceptions to the general rule must be referred to the Office of Policy and Communications.

J. Interviews of USMS Detainees. The USMS takes a neutral posture on the issue of media interviews of prisoners in USMS custody. If the prisoner, the judge in the case, the U.S. Attorney, the defense attorney, and the management of the facility where the prisoner is located approve the request for an interview, USMS personnel should assist in facilitating the interview if security is not compromised and it is not costly to the USMS to do so. However, it is the reporter's responsibility to obtain the approval of the parties mentioned and to ensure that the parties indicate their approval to the U.S. Marshal (in writing, if requested by the Marshal).

K. Prisoner Movement. Information about extraditions or the movement of prisoners in USMS custody will not be given out to the news media in advance. It is permissible to confirm that someone is a prisoner and

where they are confined, if this information does not jeopardize security.

Referral of News Articles and Radio/TV Reports. U.S. Marshals should send to OPC newspaper clippings of any activities within their districts which specifically mention the U.S. Marshal's office, Deputy Marshals, or operations.

TV and Motion Picture Production Companies. The Chief Policy and Communications Officer coordinates USMS communications with television and motion picture production companies, and commercial publishers and authors. All requests from producers/authors, including television network news daily telecast and magazine shows (e.g. "60 Minutes"), for story ideas or other kinds of assistance must be referred to OPC.

Publications and Speeches. Articles or papers written by USMS employees that pertain directly to the primary mission activities of the USMS for publications circulated outside the Department of Justice must be cleared in advance by the Chief Policy and Communications Officer.

The Standards of Conduct for Executive Branch Employees prohibits an employee from being compensated for speaking or writing which relates the employee's official duties. 5 C.F.R. § 2635.807(a). Accordingly, Marshals Service personnel cannot be compensated for writing an article or making a speech when the topic of that article or speech is a Marshals Service policy, the mission of the Service or related to the employee's duties. The Office of the General Counsel should be contacted for guidance in this area.

PROPONENT: Office of Policy and Communications. Point of contact: Katherine K. Decudes, MNETS, 202-307-9065.

DISTRIBUTION: All Headquarters and District Offices

POSTING INSTRUCTION: File this Notice with Chapter 2.2 USMS Manual (unrevised).

/s/ Illegible
Director

3/21/94
Date

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND
STATE OF MARYLAND
MONTGOMERY COUNTY TO WIT:

WARRANT
CRIMINAL NO. 54859 JUDGE: L. RUBEN

THE STATE OF MARYLAND, TO ANY DULY AUTHORIZED PEACE OFFICER, GREETING: YOU ARE HEREBY COMMANDED TO TAKE DOMINIC JEROME WILSON

IF HE/SHE SHALL BE FOUND IN YOUR BAILIWICK, AND HAVE HIM IMMEDIATELY BEFORE THE CIRCUIT COURT FOR MONTGOMERY COUNTY, NOW IN SESSION, AT THE JUDICIAL CENTER, IN ROCKVILLE, TO ANSWER AN INDICTMENT, OR INFORMATION, OR CRIMINAL APPEALS UNTO THE STATE OF MARYLAND, OF AND CONCERNING A CERTAIN CHARGE OF THEFT U/$300
VIOLATION OF PROBATION

BY HIM COMMITTED, AS HATH BEEN PRESENTED, AND SO FORTH. HEREOF FAIL NOT AT YOUR PERIL, AND HAVE YOU THEN AND THERE THIS WRIT.

WITNESS, THE HONORABLE CHIEF JUDGE OF THE SIXTH JUDICIAL CIRCUIT OF MARYLAND.

DATE OF BIRTH: 09/01/64

[LOGO]

/s/ Bettie A. Skelton
BETTIE A. SKELTON, CLERK
of the Circuit Court for
Montgomery County, Maryland
50 Courthouse Square
Rockville, MD 20850-2393

DATE ISSUED 04/14/92

SHERIFF'S RETURN

INVESTIGATING OFFICER: DB HDQ.#:

CEPI: DATE:

BA58

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND
STATE OF MARYLAND,
MONTGOMERY COUNTY TO WIT:

WARRANT
CRIMINAL NO. 53907 JUDGE: L. RUBEN

THE STATE OF MARYLAND, TO ANY DULY AUTHORIZED PEACE OFFICER, GREETING: YOU ARE HEREBY COMMANDED TO TAKE DOMINIC JEROME WILSON

IF HE/SHE SHALL BE FOUND IN YOUR BAILIWICK, AND HAVE HIM IMMEDIATELY BEFORE THE CIRCUIT COURT FOR MONTGOMERY COUNTY, NOW IN SESSION, AT THE JUDICIAL CENTER, IN ROCKVILLE, TO ANSWER AN INDICTMENT, OR INFORMATION, OR CRIMINAL APPEALS UNTO THE STATE OF MARYLAND, OF AND CONCERNING A CERTAIN CHARGE OF ROBBERY
VIOLATION OF PROBATION

BY HIM COMMITTED, AS HATH BEEN PRESENTED, AND SO FORTH. HEREOF FAIL NOT AT YOUR PERIL, AND HAVE YOU THEN AND THERE THIS WRIT.

WITNESS, THE HONORABLE CHIEF JUDGE OF THE SIXTH JUDICIAL CIRCUIT OF MARYLAND.

DATE OF BIRTH: 09/01/64

[LOGO]

/s/ Bettie A. Skelton
BETTIE A. SKELTON, CLERK
of the Circuit Court for
Montgomery County, Maryland
50 Courthouse Square
Rockville, MD 20850-2393

DATE ISSUED 04/14/92

SHERIFF'S RETURN

INVESTIGATING OFFICER: DB HDQ.#:

CEPI: DATE:

BA58

———

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND
STATE OF MARYLAND,
MONTGOMERY COUNTY TO WIT:

WARRANT
CRIMINAL NO. 52384 JUDGE: L. RUBEN

THE STATE OF MARYLAND, TO ANY DULY AUTHORIZED PEACE OFFICER, GREETING: YOU ARE HEREBY COMMANDED TO TAKE DOMINIC JEROME WILSON

IF HE/SHE SHALL BE FOUND IN YOUR BAILIWICK, AND HAVE HIM IMMEDIATELY BEFORE THE CIRCUIT COURT FOR MONTGOMERY COUNTY, NOW IN SESSION, AT THE JUDICIAL CENTER, IN ROCKVILLE, TO ANSWER AN INDICTMENT, OR INFORMATION, OR CRIMINAL APPEALS UNTO THE STATE OF MARYLAND, OF AND CONCERNING A CERTAIN CHARGE OF ASSAULT W/I TO ROB
VIOLATION OF PROBATION

BY HIM COMMITTED, AS HATH BEEN PRESENTED, AND SO FORTH. HEREOF FAIL NOT AT YOUR PERIL, AND HAVE YOU THEN AND THERE THIS WRIT.

WITNESS, THE HONORABLE CHIEF JUDGE OF THE SIXTH JUDICIAL CIRCUIT OF MARYLAND.

DATE OF BIRTH: 09/01/64

[LOGO]

/s/ Bettie A. Skelton
BETTIE A. SKELTON, CLERK
of the Circuit Court for
Montgomery County, Maryland
50 Courthouse Square
Rockville, MD 20850-2393

DATE ISSUED 04/14/92

SHERIFF'S RETURN

INVESTIGATING OFFICER: DB HDQ.#:

CEPI: DATE:

BA58

MCPID# 77230

WILSON	DOMINIC	JEROME	
Last Name	First	Middle	Suffix

Race B Sex M DOB 090164 POB MD HGT 600 WGT 185
EYE BRO. HAIR BLK

Date & Source
#1 2/92 P & P

Street Number, Street Name, City, State, and Zip Code
909 NORTH STONESTREET AV, ROCK. MD

Phone Number
279-7307

#2 _____

#3 _____

#4 _____

WORK _____

Motor Vehicle: Year _____ Make/Model _____

Tag# _____

SUSPENDED

Operator License# W425149402681 State MD Yr Expires 95

SSN 218 86 2503 FBI 616187CAZ SID 411867 ScarsMarks SC R WRIST

Caution Desc RESISTS/ASSAULTS POLICE/ARMED

Misc: VOP- ROBBERY

****Supplemental Record Entry (AKA's, DOB's, Add SSN's, Scars, Marks, Tatoo's)****

AKA	DOB	SSN	SCARS, MARKS, TATOOS
WILSON, DOMINI J		040164	SC R EYE
WILSON, DOMINICK JEROME		213862503	GLASSES
TAT CHEST			SC FHD SC L HND
STONEY, DOMINIC JEROME	SC CHEST TAT UL ARM		
			SC R HND TAT L BRST

53907		5012	
OCA/Case#		Offense Code	
1299		4	
Charge Type		*War Type*	
041492	G	Y	M
Date of Warrant	Caution Code	*VOP*	*M/O*

Case Type CRI *Court Type* C Sent To: _____

PO 15 PO PO PO 26 16 16 17 16
NCIC Fingerprint Classification

Henry Classification _____

Tracking Number 634471D5

CR Number _____

Rec'd Date 041492 Deputy/Date _____

P.O. Check _____

CompWork CH Date 041592 Prep By _____ Date _____ ID _____ Date _____ QC By _____

MILES/NCIC Entered By Blt

Date 4/16/92

NCWS Entered By _____ *Date* _____

Worksheet Location: Silver Spring _____

Wheaton _____ Rockville/Bethesda X

Germantown _____ File _____

EXCERPTS FROM THE SEPTEMBER 19, 1995 DEPOSITION OF GERALDINE E. WILSON

Q One of the claims that you do make here in the lawsuit is that some people were taking pictures at the time.

A That's true.

Q And what did you think of that at that time.

A I was upset by it, because I was standing there in a thin nightgown and my husband was laying on the floor in his underwear. Here all these men in my house. It was very inappropriate and it was embarrassing. It was humiliating.

Q When did you ultimately discover that the person who was taking the pictures was a reporter from "The Washington Post," or did you ever find that out until today?

A It was much, much later. I can't remember at specifically what point in time I found it out, but it was not immediately.

Q Okay. And you don't know whether or not the pictures that he took in the apartment were ever publicized in any way?

A I do not know what became of the pictures that were taken in my house.

G. Wilson Depo. at 20-21

Q How do you feel currently now that you know it was "The Washington Post" reporters who were in your house?

A I feel that it was an invasion of my privacy and it should not have happened. It should never have been allowed to happen. They never should have been brought to my house.

Q But at that time you didn't know that they were members of the press?

A I had no idea who they were.

G. Wilson Depo. at 22.

Q At which point in time did they start taking pictures?

A Charlie was on the floor sprawled out in his underwear. I was standing in the kitchen in my nightgown.

G. Wilson Depo. at 23.

EXCERPTS FROM THE SEPTEMBER 19, 1995
DEPOSITION OF CHARLES E. WILSON, JR.

Q Did you believe that the reporter and photographer from "The Washington Post" had done anything wrong?

MR. SELIGMAN: Objection. You're assuming that he knew it was "The Washington Post."

BY MR. NATHAN:

Q You can answer.

A Like the marshals, I had no idea who it was taking pictures.

C. Wilson Depo. at 63.

Q What about those two people did upset you?

A One person was taking pictures of me in the nude. Well, I had on a pair of briefs. I thought that was wrong.

C. Wilson Depo. at 71.

CHARLES H. WILSON, ET AL.,

Plaintiffs,

v.

RAYMOND M. KIGHT, ET AL.,

Defendants.

Case No.: PJM-9-1718

6500 Cherrywood Lane
Greenbelt, MD 20770
December 4, 1995

TRANSCRIPT OF MOTIONS HEARING
(EXCERPT: OPINION OF THE COURT)
BEFORE THE HONORABLE PETER J. MESSITTE
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:
For the Plaintiffs:
JAMES S. FELT, ESQUIRE
KRISTIN AMERLING, ESQUIRE
RICHARD A. SELIGMAN, ESQUIRE
ARTHUR B. SPITZER ESQUIRE

For the Defendants:
STUART M. NATHAN, ESQUIRE
PIERRE R. ST. HILAIRE, ESQUIRE

Audio Operator:
ELLA STALLINGS

Transcription Service:
MONIQUE E. GIBSON
M.E.G. TYPING & TRANSCRIPTION

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

THE COURT: All right. I'm going to give you my decision now, gentlemen, ladies.

This matter is a suit of Charles H. Wilson, et al., against defendants, Mark Collins, Harry Layne, Joseph Perkins, Brian Roynestad, and Eric Runion. It is a civil action for damages and declaratory relief allegedly to redress deprivations of certain civil rights under 42 USC Section 1983 and also with regard to the federal agents under [*Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*," 403 U.S. 388 (1971)].

Plaintiff Charles Wilson and, I gather, his wife, Geraldine Wilson, are residents of Montgomery County [, Maryland]. The minor plaintiff in the case is Valencia Snowden through her mother and next friend, Raquel [Snowden].

Defendants Collins, Runion, and Roynestad are Montgomery County deputy sheriffs. Defendant Harry Layne was at relevant times in this suit a supervisory deputy U.S. marshal in the U.S. Marshal's Office for the Superior Court of the District of Columbia and site supervisor for the Washington, DC operation [of "Operation Gunsmoke"]. Defendants Perkins and Olivio were deputy U.S. marshals who were involved in the incident that I will describe momentarily. And defendant United States of America is in the case by reason of the fact that the U.S. Marshal Service are employees of same were involved in this transaction.

It appears that in or about February of 1992, the U.S. Marshal Service in a joint effort with the Montgomery County Sheriff's Department engaged in a pursuit of hard-core fugitives including parole and probation violators, an operation called Operation Gunsmoke. Defendant

Layne was the Washington area supervisor of this venture. And Montgomery County, pursuant to memorandum of understanding on or about February 12, 1992 executed by their sheriff, agreed to participate in this joint venture, Operation Gunsmoke.

The events in question began in or about April of 1992 when the Circuit Court for Montgomery County issued a bench warrant for the arrest of one Dominic Jerome Wilson based on alleged violation of probation. Wilson was apparently on probation for, as I understood it, robbery at the time. He also had a record which involved elements of violence in his past and was specifically – it was noted to the arresting officers that he was potentially armed and could be dangerous and violent. That was part of the factual base at the time.

In the records of the Montgomery County Sheriff Department, Dominic Wilson had listed as his address 909 North Stone Street Avenue in Rockville and that those records also were similar to records that were held by the probation office involved with active probation that Wilson was being sought for violation of. And that that address had been listed on numerous occasions by Wilson as his address. It turns out that the address was, in fact, the home of Charles and Geraldine Wilson, the parents of Dominic Wilson.

With that information and with the warrant in hand, various of the defendants came upon the 909 North Stone Street address at approximately 6:30 a.m. on April 16, 1992. Now, as I understand it, all the defendants but Layne were on site at that time, is that correct, both the sheriffs and the marshals.

According to the allegations of the defendants, just before they knocked on the door, they had taken into custody the brother of Dominic Wilson on a presumably unrelated charge. And he had been driven to the front of the premises and had indicated some time within 30 to 45 minutes prior to the entry that, in fact, Dominic Wilson lived at that address and, in fact, had been there the night before.

The further indication is that at approximately 6:45 a.m. when the defendants knocked at the address, the child, Valencia Snowden, then nine years old, as it happened the daughter of Dominic Wilson, although that was not known to the officers at the time, answered the door. The allegation of the defendants is that when she answered the door, the inquiry was is Dominic Wilson at home and she answered she didn't know. And then presumably there is some dispute about whether there was a knock and announce, although the officers indicate that they announced that they were there with a warrant for the arrest of Dominic Wilson.

The officers then entered into the home at this early morning hour. And plaintiffs, Charles and Geraldine Wilson, were in their bedroom in bed. They heard commotion and got up, came to the door, and were confronted by Perkins, Olivio, and Collins pointing guns and that Mr. Wilson raised his hands and stood still. He was only dressed in his undershorts. According to the plaintiffs, the defendant[s] did not identify themselves. They say that he did. In any event, there was an alleged statement by Perkins to Wilson at gunpoint to "get the fuck on the floor." And then at that point Wilson was forced to the floor as he was complying with Perkins' order. It is

alleged also by Wilson that [Olivo] put his knee into Wilson's back and held the gun to his head while he lay on the floor. And that Geraldine Wilson came to the scene and observed what went on while all this was happening.

There was questioning about the whereabouts of Dominic Wilson, the adult son of the plaintiffs. The defendants had photographs of Dominic Wilson, and they showed the photographs. And it was obviously not the same person as Charles Wilson whom they encountered at that time. It is alleged by the plaintiffs that they indicated that first of all, that plaintiff Charles Wilson was not Dominic Wilson, that Dominic Wilson did not live there, and that he wasn't there, and that he hadn't been seen for two weeks. And that was apparently confirmed by Mrs. Wilson. There was some alleged threats that the Wilsons might be incarcerated if Wilson was found in their house, that is Dominic Wilson. In any event, there was a search [of] the home. Nobody else was in the home other than the child. Mr. Wilson indicates that he was forcibly restrained on his living room floor at gunpoint for approximately 10 minutes including, he says, after defendants had verified [that] there was no one else in the home. Then the defendants left. Apparently there was also some alleged shouting by the defendants at Mr. Wilson. The defendants say that Mr. Wilson himself shouted and used epithets during that time.

That is essentially the factual predicate of the case as far as any alleged physical imposition upon the plaintiffs.

The other fact of some significance is in the case that, pursuant to a media ride along policy that was apparently in effect in at least this region of the marshal's

service, one or more reporters and/or photographers from the Washington Post accompanied marshals and sheriffs in their operations including in the Wilson home on that evening. And it appears that either one – were there two total, a photographer and a reporter? That both may have entered the home that [morning]. And the photographer, I think it is stipulated, did take pictures of Mr. Wilson when he was in custody under arrest, possibly on the floor in his undershorts being restrained as he was. And that they were not in the home with the consent of the Wilsons, but they simply tailed along, piggybacked on the warrant that the officers had with regard to Dominic Wilson.

This suit has followed, and in the second amended complaint, there are allegations against all of the defendants in this case, specifically with regard to all who entered the premises, that there was an unlawful entry and search in the case. And secondly, that there was an unlawful search in that the media was brought in to accompany the officers who were operating pursuant to the arrest warrant. And third, that once inside, one or more of the officers applied excessive force to the Wilsons in trying to execute this warrant. There is no dispute that Dominic Wilson was not found on the premises at that time, and eventually the officers all departed.

The Court will address these several issues now as it has various motions for summary judgment filed before it, motions by the individual defendants, both county and federal. There also was a motion for summary judgment that was filed by plaintiffs that the Court did not receive as late filed, and I'll have more to say about that at an appropriate time.

But the Court visits first the issue of the alleged illegal entry in connection with this case. It has been held in Payton v. New York, 445 US 573, a 1980 Supreme Court case,

> "For Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives where there is reason to believe the suspect is within."

That is the general proposition that we confront here. And so we ask whether in executing this warrant there was probable cause that would rather – whether there was reason – let me [restate] that. This test has been refined somewhat to have basically a two-prong requirement. First, that there be a basis for believing, a reasonable belief that the suspect dwells at the indicated address; and secondly, that there is reason to believe that at the time of the arrest, the suspect is within the dwelling. And there was a number of cases that have visited that issue before.

Let us address, first of all, the facts of this case in the first prong. There's no question that there was a reasonable basis and probable cause if there is indeed a distinction between the two, to believe that Dominic Wilson resided at the indicated address. The fact that it was the given address by him during his active probation in the Court's view would suffice, but certainly there was more. The sheriffs had the address. He had used it on arrest records in the past. That's all that was necessary to establish the first prong. To the extent that there is some dispute of fact, it perhaps would not be appropriate to weigh the other facts that the defendants rely on.

Although there does not appear to be any dispute of fact that the child was asked is Mr. Wilson at home, and she said she didn't know. That too would add to the calculus to establish that there was reason to believe that Wilson was within, but frankly, it's not necessary for satisfaction of the first prong. It's enough that he was there.

The second issue is whether there was reason to believe that at the time that the warrant was being executed Wilson was dwelling within. The suggestion made by the plaintiffs is that it is not enough merely to say that at between 6:30 a.m. and 6:45 a.m. there would be reason to believe that someone such as – that Wilson would be at this address. And in that regard, the plaintiffs rely on Harrison v. Kuchar, 702 F. Supp. 178, a Northern District of Illinois case from 1988. The defendants on the other hand draw the Court's attention to U.S. v. Stinson, 357 F. Supp. 1026, a 1994 case from the District of Connecticut, which basically held – this being 857 F. Supp. at 1031,

> "Furthermore, once they had reason to believe that Stinson was living at the State Street address, it was reasonable for the officers to believe that Stinson would actually be at the address at approximately 7:00 a.m. on May 5, 1994 when the warrant was executed,"

citing cases that were in accord. The Court finds as a matter of law objectively that it was reasonable on the basis of it being that early morning hour to believe that the suspect, Dominic Wilson, was at the address where they had reason to believe he dwelled. And that alone would make it objectively reasonable for the officers to do what they did.

And accordingly, that would dispose of any cause of action for violation of Fourth Amendment rights, at least insofar as the alleged illegal entry is concerned. If there's any doubt about it, however, it goes to establish qualified immunity on the part of all the officers in this case. In order for there to be any liability in connection with this sort of issue, one would have to identify the specific right allegedly involved. I'm going from Pritchard v. Alfred, 973 F.2d 307, a Fourth Circuit case from 1992. This at 312. Ruling on a defense qualified immunity requires identification of the specific rights allegedly violated, determining whether at the time the alleged violation the right was clearly established, and third, if so, then determining whether a reasonable person of the officer's position would have known that doing what he did would violate that right. The first two of these present pure questions of law for the Court, and that's as far as you really need to go with regard to the first court here. Assuming the specific right is not to have your home entered without pursuant to arrest warrant for someone where there isn't reason to believe that he is within, clearly there was some issue about – and to refine it even more precisely whether it would suffice merely to go in at an early hour and comply with the constitutional requirements, clearly there was some ambiguity as of the time of this alleged search, April 1992, as to whether that would have been allowable given the division of opinion between Stinson and Harrison. And the Court finds accordingly that because the right was not clearly established there would be no liability with regard to the first Fourth Amendment violation.

Now, the second issue deals with the alleged excessive force once inside. And to recite again the facts as they appear, there was some harsh language used allegedly by the invading officer or officers, that Mr. Wilson was told to lie down on the ground, that a knee was put on his back, that a gun was held on him and perhaps close to his head. And the allegation is that that constituted excessive force. Now, had I been deciding this case on facts that occurred very recently in light of the recent Fourth Circuit case of Taft v. Kleins, 1995 West Law 679189, a Fourth Circuit case decided on November 16, 1995, I might have come out one way. But frankly, it seems to me that in order to establish whether – well, I'm jumping ahead on the qualified immunity, and I'll stay with that for a moment. Assuming that there was excessive force that was used, in order to establish whether or not there would be liability, it seems to me that the case of Mench v. Diar, 956 F.2d 36, a Fourth Circuit case from 1991 would be applicable, where the wrong person was arrested. And even so, the officers attempting to arrest him, anticipating that there might be violence and noting that there was some shouting and running and refusing to cooperate on the part of the defendant, held him down and restrained him and handcuffed him and also drew a gun on him, I believe. In that case as well as Simons v. Montgomery County Police Officers, 762 F.2d 30, a 1965 case, an appropriate amount of force, even though it was invasive, if you will, was used and was deemed to be reasonable under the circumstances.

So that when you look at the facts of this case, either you've got – and you do have both actually – an objectively reasonable series of acts taken by the officers,

however harsh they might have been viewed by the individual plaintiffs, and, therefore, it was reasonable on that basis. If there's any dispute about whether what they did was permissible, that it was sufficiently not clearly established that the sort of thing that they did was impermissible constitutionally speaking, and, therefore, there would be qualified immunity.

But in either case, either it was objectively reasonable or qualifiably immune. And under those circumstances, the Court would also grant summary judgment with regard to the excessive force claim alleged against any and all of the defendants.

Which [brings] us to the third claim that is alleged against the defendants. And that seems to involve not just a Fourth Amendment issue of an unreasonable search and seizure, but there seems to be a lot of state law causes of action mixed in here. I'm not really sure whether – and nobody seems to argue each of the separate case law causes of action here. Either it's an unreasonable search and seizure and it's constitutional, or it can be both. It can be negligence. It can be intentional infliction. It can be trespass. It can be a lot of things. But I think we've argued this primarily as a Fourth Amendment issue rather than the individual state claims as to whether they survive or not. I don't know. Have we?

MR. [ST. HILAIRE]: It's in our [brief] on behalf of the United States, Your Honor.

THE COURT: It's what.

MR. [ST. HILAIRE]: In our [brief] on behalf of the United States, that's who the common law claims are asserted against.

THE COURT: Well, I don't know where we are with regard to the common law claim, Mr. Felt, quite frankly.

MR. FELT: Well, it's their motion. We cross moved for summary judgment on this point under the invasion of privacy and trespass. I suppose it would also be a violation of the Maryland Declaration of Rights, Article 26.

THE COURT: Excuse me one second.

(Brief pause)

THE COURT: Well, I just wonder whether –

MR. FELT: I would say that also we would be entitled to summary judgment on those state law claims.

THE COURT: Well, I'm not sure how we – has the county responded to those issues, or is the county in that case? I guess the question I've got is have you – was there proper notice given under the State Tort Claims Act and anything like that for the common law causes of action? I mean, I'm not sure how you get summary judgment. There are a lot of procedural impediments to state law causes of action here that I really haven't heard about. Frankly –

MR. FELT: We have alleged in our complaint that we've done that, and we have in fact done what needs to be done under the Federal Tort Claims Act.

THE COURT: Well, federal torts perhaps, but what about the state torts?

MR. FELT: They've never made any –

MR. [NATHAN]: Well, we haven't raised that because we've sort of piggybacked on the federal claims to the extent that –

THE COURT: You've argued pretty much the federal claim here without the state causes of action being pursued.

MR. [NATHAN]: I mean, the Declaration of Rights claims are going to rise or fall within the federal claims.

THE COURT: I understand that. That's the same as the 1983 claims.

MR. [NATHAN]: To the extent that there was allegations of malice or gross negligence, the State Tort Claims Act doesn't apply.

THE COURT: Well, we may –

MR. [NATHAN]: We have actually gone ahead and responded. For instance, on the straight negligence claim, we just went ahead and responded that there was no creation of a duty.

THE COURT: All right.

MR. [NATHAN]: Otherwise, we've just adopted the federal position.

THE COURT: I'll handle those. All right. You have a seat.

MR. [NATHAN]: Okay.

THE COURT: Let us stay with the third cause of action against which alleges essentially unreasonable

search and seizure based on what is said to be the unauthorized presence of the Washington Post reporter and photographer. Now, this is characterized as possibly negligence or gross negligence or intentional infliction of emotional distress or trespass or invasion of privacy or some such. It comes in a lot of different forms. For present purposes, I'll just address it as an unreasonable search and seizure.

The argument that is made by the plaintiffs with regard to the presence of the officers is that that violates Fourth Amendment rights, and essentially, if you will constitutes an invasion of privacy. I think that's really the essence – or trespass. That's the essence of what we're talking about. And that particularly insofar as the home is involved, that that is a particularly protected location.

The analysis that the defendants offer in this regard is that, assuming that a specific right has been allegedly violated, that at the time of the violation, [April 16, 1992], that right was not clearly established. And even if it was clearly established, then a reasonable person in the officer's position would have known that – in this case, would not have known according to the defendants that what he was doing would violate that right. The defendants cite some cases from other jurisdictions in which it was held as of the – some time in or about the time frame that these events occurred that the presence of a third person, such as reporters, would not rise to the level of a constitutional tort. And among the cases that are relied on showing decisions directly contra were [*Moncrief v. Hanlon*, 10 Med. L. Rptr. (BNA) 1620 (N.D. Ohio Jan. 6, 1984),] where a news media accompanied police into a

search. And the federal court in Ohio objected the holding that there was a constitutional tort stated. [*Higbee v. Times Advocate, Inc.*, 5 Med. L. Rptr. (BNA) 2372 (S.D. Cal. Jan. 9, 1980], to the same effect; and [*Prahl v. Brosamle*, 294 N.W.2d 768 (Wis. Ct. App. 1980)]. And that that is meant to show that there was no clearly established right. The defendants also rely on a more recent case from the Sixth Circuit, [*Bills v. Aseltine* 52 F.3d 596 (6th Cir. 1995)]. And all that is meant to suggest that the right, whatever it was, was not clearly established at the time.

The plaintiffs rely principally on a case from the Second Circuit, [*Ayeni v. Mottola*, 35 F.3d 680 (2d Cir. 1994), *cert. denied*, 514 U.S. 1062 (1995)], where television reporters seeking on-the-scene coverage of dramatic events had accompanied law enforcement officers inside homes in connection with raids that were being made there. The Second Circuit, Chief Judge Newman writing the opinion – I think I indicated the cite, 35 F.3d 680 – went on to discuss the issue in this case. And he was citing some – actually, March 1992 was the date of the actions in the *Ayeni* case.

And the Second Circuit said [at] 35 F.3d at 686:

> Agent Mottola correctly asserts that there is no reported decision that expressly forbids searching agents from bringing members of the press into a home to observe and report on their activities. He therefore argues that there was no clearly established rule prohibiting such an act.

The Court says:

> The argument lacks merit. It has long been established that the objectives of the Fourth Amendment are to preserve the right of privacy

> to the maximum extent consistent with reasonable exercise of law enforcement duties. And that in the normal situations where warrants are required, law enforcement officers' invasion of privacy of a home must be grounded on either the express terms of a warrant or the implied authority to take reasonable law enforcement actions related to the execution of the warrant. Mottola exceeded well established principles when he brought into the [Ayeni] home persons who were neither authorized by the warrant to be there nor serving any legitimate law enforcement purpose by being there. A private home is not a sound stage for law enforcement theatricals.

The unreasonableness of Mottola's conduct in Fourth Amendment terms is heightened by the fact that not only was it wholly lacking in justification based on the legitimate needs of law enforcement, but it was calculated to inflict injury on the very value that the Fourth Amendment seeks to protect, the right of privacy. The purpose of bringing the CBS camera crew into the [Ayeni's] home was to permit public broadcast of their private premises, and thus to magnify needlessly the impairment of their right to privacy.

In [*Buonacore v. Harris*, 65 F.3d 347 (4th Cir. 1995)], a case just decided in the last two months by the Fourth Circuit, we have some interesting parallels. There the opinion was written by Judge [Motz] of the circuit. The two law enforcement officers, after obtaining a warrant to search a home, invited a private person to engage in an independent general search of the home for items that were not mentioned in the warrant. Apparently it was a

telephone company operator looking for tools or equipment. And an action was brought by the homeowner alleging violations of his civil rights, and the defense of qualified immunity was offered. Summary judgment was moved, and it was refused by the trial court, and the appeal was dismissed by the Fourth Circuit, but there is ample discussion in the case about the qualified immunity issue and whether bringing along a private person to aid in a search would pass muster under the Fourth Amendment. And it is clearly the decision of [the court that] whether or not there was a cause or action that could go forward obviously depend[ed] on whether the specific right violated was clearly established at the time.

The Fourth Circuit discussion, as I was saying, gets into a great deal of consideration of general warrants and whether in effect bringing in a private person as part of a specific warrant in effect breached the clearly established right of someone not to have the privacy of their home breached by someone who was not an official and not acting pursuant to a specific warrant. And if you look at the language in the opinion, there's a great deal of discussion about the importance of the privacy of the home. Just looking randomly at 65 F.3d [at] 355, speaking about James Otis,

> General warrants were not directed solely at authorized officers acting on behalf of the government but could be executed at the request of anyone. And because they had constituted an improper invasion, indeed annihilation of a person's cherished right to privacy, particularly in his own house, they were objectionable.

And going on at page 356:

> Similarly, the special protection to be afforded to person's right to privacy within his own home has also been continuously and consistently recognized by the Court.

And the Court essentially goes on to talk in terms of specific warrants in that case and finds that apparently despite other cases that were analogous such as the ones at hand, that even if there were no cases reported directly on point that would not be enough to prove that the right was not clearly established.

"Clearly established," said the Court of Appeals, "in this context includes not only specifically adjudicated rights but those manifestly included within more general applications of the core constitutional principle invoked, the right to be free from government officials facilitating a private person's general search of the sort Buonacore alleges was conducted here is manifestly included within core Fourth Amendment protection."

And then most importantly at footnote seven of the opinion, there's a discussion of the [*Ayeni*] case by the Fourth Circuit, and this just being a few months ago. It is indicated that the *Ayeni* decision was not squarely on point, but it was deemed sufficiently analogous. And that certainly suggests that the Fourth Circuit was sympathetic to the [*Ayeni*] analysis.

Well, having considered these facts, the Court, first of all, determine[s] whether or not there was any objective reason for the media people to be present. And the Court determines that there clearly would have been a specific right, a constitutional right to be free from unreasonable

searches and seizures. And whether you add the invasion of privacy or trespass element to it, the fact it there was a constitutional right it be free from unreasonable searches and seizures, and the presence of a media officer or media individual is not serving any legitimate law enforcement purpose.

The question then becomes whether that right was clearly established as of April 1992 when this matter occurred. If you look at *Buonacore*, of course, that's a case that arose as of November [1992], although it was just decided. And the Second Circuit and in my view the Fourth Circuit understand that there are certain core rights involving the Fourth Amendment that are abridged regardless of whether there are either no cases that go contra or, frankly, if there are a few cases that go contra as there were here, the Ohio and California and Wisconsin cases. Because in the Court's view, there is a core constitutional right here, to be free from unreasonable searches and right here, to be free from unreasonable searches and seizures, and that was clearly established as of April of [1992] when these events took place.

Frankly, I think you can analyze this as a breach of the requirement for a specific warrant. That what you've got here are people who are operating, if not directly in aid of a – and in a way, one could argue that they were trying to operate in aid of law enforcement. But to the extent that they weren't, they were in the house, snooping around, looking around, participating in one fashion or another with both the search of the premises for the individual, who was not found, and the seizure of the Wilsons, who were detained and actually photographed

by the photographer. So that the right was clearly established. And any reasonable officer should have known that what was going on was a violation of a clearly established right.

And it seems to me that, at least for present purposes, one is not able to say whether Layne as the supervisor on this project, although not someone on site, is himself exonerated from liability. The individual officers who were on site, all of them to the extent that they may have been directly sanctioning the presence of the media personnel, could still be liable. I don't know from this record clearly whether any of these officers are or are not responsible for the presence of the reporter on site and whether it does appear that Layne may well be responsible for the reporters on site. But it seems to me that the factual record would have to be developed somewhat more explicitly to determine just what role the individual officers had in bringing the media people along here in order to determine what liability individually any of these individuals may have. Clearly, somebody's got some liability for letting these people come in an perpetrate what is, in my view, a constitutional tort in violation of a clearly established rule.

So I don't know that – I think the problem I've got analytically now is just establishing who is responsible. I don't frankly, as far as Mr. Layne is concerned, Mr. St. Hilaire, to the extent that he was implementing this policy, my suspicion is that he is liable, although maybe you want more to say about that. I think he is certainly as the implementer is. And unless you can persuade me otherwise, I would probably be inclined to grant summary judgment as to him since there's no dispute of fact that he

implemented this policy. As to the others, I just don't know the role that they played in it. And I can't say that their mere presence on site, the mere fact that the media people were there and they were there means that they authorized it. I just don't know based on this record whether they did or didn't.

And, so at this point, I'm prepared to deny summary judgement as to all defendants on that unreasonable search and seizure count and following the media people. Also deny it as to the plaintiffs except perhaps as to Layne since I don't know exactly who's involved to what extent on defendant's side. Do you want to comment on that, Mr. St. Hilaire?

MR. ST. HILAIRE: Yes, Your Honor. Just two things I want to make clear. Your Honor is holding that the statement – well, the allegation that taking the press inside the residence states a Fourth Amendment violation and that it was clearly established in 1992.

THE COURT: That's right.

MR. ST. HILAIRE: Okay. We want to make clear because we have to consult with the solicitor general to determine whether an interlocutory appeal –

THE COURT: My statement is that specifically taking – well, analytically I wouldn't say that it's strictly taking the media in. I think, if you ask my view, more generally taking any unauthorized person into a home violates the Fourth Amendment. Now, we can be more precise about this case and say taking a Washington Post reporter or any media person, whether it's radio, TV – I

mean, you're asking me to expand how far I go. It happens to be newspaper people and photographers. But I think taking media people in certainly to observe, photograph, and do whatever constitutes a violation of the Fourth Amendment. I reason though from a much more general base, which is anybody who's unauthorized, frankly, as I read these cases, would constitute an unreasonable search and seizure. I don't think that you can use the authorization of a warrant to bring in any body for any reason unless arguably you've really got somebody in aid of some sort of an arrest I guess. I don't know. There may be some imaginable circumstances, but they're few and far between. I don't know whether I've answered your question or not.

MR. ST. HILAIRE: Well, no, it's several of your brethren disagreed, which is what the centerpiece of unqualified immunity analysis is. Only that, I guess, now we're on disputed issues of fact as who did what to whom.

THE COURT: Well, I think that's right. Who authorized the presence of the people there? I just don't know on this record that you've got that. I don't know that that's clear. What I do, I think, hear you say if you're relying on that media ride-along policy, if you allow that the language in there does contemplate entries into the home and it does say entries into the house, and you allow that Layne was responsible for the implementation of that policy and permitted this sort of thing to happen, then I think probably you have – they have stated not only a cause of action, but I'm not sure that they're not entitled to summary judgment on that point. What would

[be] the defense once I make my finding that the policy is tortious?

MR. ST. HILAIRE: The policy from the constitution albeit media ride-along policy.

THE COURT: Yes, unconstitutional or at least states a constitutional tort.

MR. ST. HILAIRE: Right. And we don't hold the person who actually created this whole policy rather than –

THE COURT: Well, is that person in the case at this point?

MR. ST. HILAIRE: He is not or she is not.

THE COURT: I mean, that person isn't. But it seems to me anybody who implements it is. I don't think it's a defense to say I was only following orders if that's the way you want to put it. I mean, anybody who participates in the tort is a tortfeasor.

MR. ST. HILAIRE: Within the chain of command.

THE COURT: Within the chain of command. This man happens to have been named, and that's why I think as to him they've stated not only a cause of action, but unless you can tell me otherwise, I think they're probably entitled to summary judgment as to him.

MR. ST. HILAIRE: Well, the only thing I can say is Layne assigned the group. He got his orders from headquarters that say assign media people to your various groups, and that's what he did.

THE COURT: Well, I don't know if that's a defense. I mean, as I say, if he participated in a constitutional tort, he's liable and others may be as well. And so unless I hear otherwise from you in the next minute or two, I would be prepared to grant summary judgment on that count as to Layne and not as to the others for the reasons indicated, that we don't have the factual basis about their authorization. And frankly, I don't know frankly that, as a practical matter, how this issue gets tried. In terms of the other defendants, I'm not sure how you would prepare to try this issue, the factual issue of who's responsible for this and whether people – there's obviously a factual issue about whether these folks authorized it or were merely on site when it happened.

MR. ST. HILAIRE: Can we have one moment to talk to each other?

THE COURT: Yes.

MR. ST. HILAIRE: We'll also have – consult with Stuart Nathan because we are taking the brunt of this now and we believe we're not the only ones responsible to determine whether or not at this point if judgment is entered whether the third party the Washington Post because they are, you know, an indispensable party here.

THE COURT: Well, the issue of course is you've got a damage component to this.

MR. ST. HILAIRE: I'm sorry, Your Honor.

THE COURT: You've got a damage component to this as well so I don't know what you want to do about that. Unless you feel you've got an immediate appeal on the call of denial of qualified immunity.

MR. ST. HILAIRE: We have an immediate appeal on the

THE COURT: You probably do, yes.

MR. ST. HILAIRE: That's correct. In determining whether or not this case goes forward even on liability or whether there are disputed issues of fact. If this issue comes up, we take it up to the Fourth Circuit, it will divest the Court of all jurisdiction on that specific claim, which is something we need to consult with the solicitor general.